

August 22, 2001

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Ms. Magalie R. Salas, Secretary
Federal Communications Commission
Portals II, TW-A325, 445 Twelfth Street, S.W.
Washington, D.C. 20554

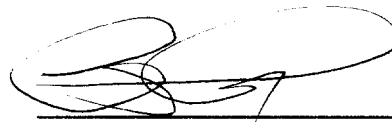
01-156

Re: Reply Comments of Charles Crawford
Paducah, Texas

Dear Ms. Salas:

Enclosed is an original and four (4) copies of my Reply Comments for
Paducah, Texas.

Respectfully Submitted,



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Before the
Federal Communications Commission
Washington, D.C. 20554

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In the Matter of)	
)	
Amendment of 73.202 (b))	MM Docket No. 01-156
Table of Allotments)	RM-10177
FM Broadcast Stations)	
(Paducah, Texas))	

To: John Karousos, Chief
Allocations Branch
Mass Media Bureau

REPLY COMMENTS OF CHARLES CRAWFORD

1. I, Charles Crawford, the proponent of the allotment of Channel 296C3 to Paducah, Texas in the above-captioned proceeding, hereby replies to the Comments submitted herein by First Broadcasting Company, L.P., Next Media Licensing, Inc., Rawhide Radio, L.L.C., Capstar TX Limited Partnership and Clear Channel Broadcasting Licenses, Inc. ("Joint Parties").

2. In their Comments, the Joint Parties urge that the proposed allotment be dismissed because it is "late filed to a pending rule making proceeding. See, e.g., Comfort, Texas, DA -1-1864 released August 3, 2001." The problem with this assertion is that the Comfort, Texas decision is dramatically different from the instant case. In Comfort, the proposed allotment was mutually exclusive with an allotment (to Kerrville, Texas) which the Commission had adopted in 1999, some two years prior to the submission of the proposal for the Comfort allotment. While the Kerrville allotment had not been entered into the Commission's database, that lapse

did not alter the fact that the Kerrville channel had been properly and finally allotted through the Commission's rule making processes. See Kerrville, Texas, 14 FCC Rcd 9146 (1999).

3. Here, by contrast, the supposedly inconsistent allotment (in Wellington, Texas) has not been adopted by the Commission. In fact, as the Joint Parties conceded, at the time the Paducah proposal was submitted, the Wellington proposal had not even been entered into the Commission's database, see Joint Parties Comments at 1, much less subject to any public notice which might have put any party on notice of its pendency. It cannot be said that the decision in Comfort, Texas has any relevance to the instant proceeding.

4. The Wellington allotment proposed by the Joint Parties is a component of a multi-community proposal first advanced by the Joint Parties as a counter-proposal in the Quanah, Texas proceeding, MM Docket No. 01-148. The Quanah, Texas proceeding, at first blush, would appear to be a minor (at best) matter, initiated by a three-page petition for rule making and a minimal notice of proposed rule making, intended merely to result in a single channel allotment to the community of Quanah, Texas. In response, the Joint petitioners submitted a counterproposal weighing in at more than 500 pages in which they proposed a vast array of allotments to a vast array of communities spanning a vast geographic area. The Joint Parties appear to be taking the position that that counter-proposal precludes other allotment proposals over hundreds of miles, covering most of the state of Texas and beyond. See Joint Parties Comments in MM Docket No. 01-105 (Shiner, Texas, MM Docket No. 01-131 (Benjamin, Texas), MM Docket No. 01-132 (Junction, Texas), MM Docket No. 01-133 (Mason, Texas), MM Docket No. 01-137 (Altus, Oklahoma), MM Docket No. 01-153 (Tilden, Texas), MM Docket No. 01-154 (Goldthwaite, Texas), MM Docket No. 01-156 (Paducah, Texas), MM Docket No. 01-157 (Woodson, Texas).

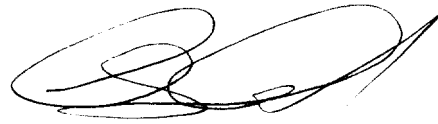
5. As I have argued previously (in the Shiner, Texas proceeding, MM Docket No. 01-105), the Joint Parties' Counterproposal is seriously flawed. Moreover, also as I have argued there, the preclusive effect which

the Joint Parties assert runs counter to fundamental due process and fair notice protections to which I and other similarly-situated parties are statutorily and constitutionally entitled. Copies of my Reply Comments and Opposition to Motion to Strike in MM Docket No. 01-105 are submitted herewith for the Commission's ease of reference.

6. In view of the foregoing, I submit that the Joint Petitioners' assertion that the proposed Paducah allotment should be dismissed is wrong. The Paducah allotment can and should be adopted as proposed in the Notice of Proposed Rule Making.

The information provided in these Reply Comments are correct and true to the best of my knowledge.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Charles Crawford', is written over a horizontal line.

Charles Crawford
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August 22, 2001

CERTIFICATE OF SERVICE


I, Charles Crawford, hereby certify that on this 22nd day of August, 2001, I caused copies of the foregoing "Reply Comments of Charles Crawford" to be placed in the U.S. Postal Service, first class postage prepaid, addressed to the following persons:

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Charles Crawford

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Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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JUL 31 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

)
Amendment of Section 73.202(b),)
Table of Allotments,)
FM Broadcast Stations.)
(Shiner, Texas))

MM Docket No. 01-105/
RM-10104

To: Chief, Allocations Branch

OPPOSITION TO MOTION TO STRIKE

1. Elgin FM Limited Partnership ("Elgin FM") and Charles Crawford oppose the motion to strike filed July 18, 2001, which is without merit and should be denied.

I.

Requirement under the
Administrative Procedure Act

2. The Administrative Procedure Act requires the Commission to publish in the Federal Register notice of a proposed rule in order to allow interested persons to file comments reflecting their interests. 5 U.S.C. §553(b)(3). The final rule must be a logical outgrowth of the proposed rule. Unless persons are sufficiently alerted to know whether their interests are at stake, the public notice is unlawful. National Black Media Coalition v. FCC, 791 F.2d 1016, 1023 (2d Cir. 1986).

3. At issue here is the Commission's notice of proposed rulemaking released August 18, 2000 regarding a proposal to allot channel 233C3 at Quanah, Texas. DA 00-1905. An Appendix to the notice stated that "the filing of a counterproposal may lead the Commission to allot a different channel than was requested for

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any of the communities involved." While the text of the notice was published in the Federal Register, the Appendix was not. 65 Fed. Reg. 53689, September 5, 2000.

II.

Analysis of operative facts

4. The substantive issue is whether this public notice fairly apprised Elgin FM and Mr. Crawford that their interests in seeking an allotment of channel 232A at Shiner, Texas, were at stake as a result of the proposed allotment of channel 233C3 at Quanah, Texas, and any counterproposal logically flowing from that allotment.

5. Shiner is located in South Texas, hundreds of miles distant from Quanah, which is located at the Panhandle in North Texas (map attached as Exhibit A). The counterproposal to the Quanah allotment consists of some 14 allotments/reallotments in communities stretching from Oklahoma to South Texas. Moreover, the adverse impact on the Shiner interests of Elgin FM and Mr. Crawford could never have been discerned from a linear projection -- even a massive one -- of theoretically possible new and changed channel numbers and their locations in the FM table of allotments. The adverse impact arose only because one of the 14 allotments/reallotments would create a new "gray area" where none exists now. The allotment that conflicts with Shiner, for a new station on channel 232A at Flatonia, Texas, was added to the counterproposal to cure that theoretical non-existent "gray area." Flatonia, like Shiner, is located in South Texas hundreds of miles from Quanah. Exhibit A.

6. Maybe NSA's computer occupying five acres in the basement at Fort Meade could have constructed a labyrinthine structure that would start as a counterproposal to channel 233C3 in Quanah at the Texas Panhandle and end up conflicting with channel 232A at Shiner near the Gulf Coast of Texas, taking into account not only a blizzard of allotments and reallotments but also the entire grid of 307(b) considerations including new "gray areas" to be created and then fixed. But, ordinary citizens like Elgin FM and Mr. Crawford cannot reasonably or lawfully be deemed to have done so or to possess divine prescience of this chain of possibilities and circumstances.¹

III.

Analysis of precedent cited in the motion

7. The only precedent cited in support of such an unacceptable result in the motion to strike (§5), Pinewood, South Carolina, 5 FCC Rcd 7609 (1990), is not remotely comparable. That case involved three communities, Summerville, Summerton and Pinewood, all in South Carolina, in reasonable proximity to each other. Map attached as Exhibit B. The initial public notice proposed to upgrade an existing Class A station to Class C2

¹ The distance between Shiner and Quanah is approximately 350 miles. The following example may assist the Washington, D.C. reader to appreciate the universe that such a distance would impose on parties wishing to file petitions for new FM allotments -- assuming a party wished to file such a petition for Washington, D.C., the potential for conflicting proposals (mandating filing the D.C. petition by a counterproposal deadline) would extend north beyond New York City to Albany and Buffalo, northwest to Cleveland and Columbus, Ohio, west to Charleston, West Virginia near the Kentucky border and south to Myrtle Beach, South Carolina.

status (at Summerville). A counterproposal sought to block this upgrade by using the channel for a first local service (at Summerton). Another FM channel was available to meet this need while allowing the upgrade. The Commission held that a third party could not belatedly seek to use that channel to serve a different local community (at Pinewood).

IV.

Analysis of other precedent

8. The precedent cited by the Commission in Pinewood do not remotely support the motion to strike either. Owensboro on the Air v. United States, 262 F.2d 702 (D.C.Cir. 1958), Pinewood at ¶¶5, 8, involved de-intermixture of the Evansville, Indiana television market, i.e., a proposal to remove all VHF channels and establish an all-UHF market. The notice identified one VHF channel to be removed from Evansville, Indiana, but did not identify another VHF channel to be removed from Hatfield, Indiana, which is located in the Evansville market. Map attached as Exhibit C. Under these circumstances, notice of the de-intermixture proposal alerted interested parties regarding the likelihood of a counterproposal to make an alternate use of the Hatfield VHF channel in another television market, i.e., Louisville.

9. Weyerhaeuser Company v. Costle, 590 F.2d 1011, 1029-31 (D.C.Cir. 1978), Pinewood at ¶8, struck down a rule issued by the Environmental Protection Agency where the path from the initial proposal to the final rule followed a "labyrinthine trail" of which interested members of the public could not possibly have

had reasonable notice. While the factual setting is different, the principle applies with full force here.

10. Medford and Grants Pass, Oregon, 45 R.R.2d 359 (1979), Pinewood at ¶8, involved a proposed rule to establish a third commercial allotment in Medford by deleting the noncommercial reservation of channel 18 there; instead, another channel (12) was assigned to achieve the third commercial allotment and reserved channel 18 was reallocated to Grants Pass. The Commission held that interested parties were on notice of the essence of the initial proposal, i.e., to provide a third commercial channel at Medford (the merits of a reserved channel at Grants Pass were not in dispute). Medford and Grants Pass are in reasonable proximity to each other. Map attached as Exhibit D.

11. Pensacola, Florida, 62 R.R.2d 535 (Mass Media Bureau 1987), Pinewood at ¶8, involved the Commission's omnibus allotment of nearly 700 new FM channels with regulatory complexities in dealing with counterproposals and petitions for reconsideration not present here. There, public notice of a petition for reconsideration which identified a channel change in Pensacola, Florida, but not in Gulf Breeze, Florida, was held to be sufficient notice to a licensee regarding its desire for an upgrade of its station in Chicksaw, Alabama, all within reasonable proximity of each other. Map attached as Exhibit E.

V.

Relevance of the Commission's data base

12. While the Commission's data base is not regarded as an official source of information, motion to strike at n. 1, the Commission publishes the data base and encourages reference to it by members of the public and their engineering counsel. As has been shown, Elgin FM and Mr. Crawford could not have discerned the path from Quanah to Shiner from the Quanah public notice itself. Moreover, at the time the Shiner petition and supporting comments were filed, there was still no reasonable way that they might have uncovered the counterproposal in research and preparation for filing the petition. The counterproposal was buried in the maw of rulemaking papers for which there was no public notice -- official or unofficial -- in the Federal Register or the agency's data base. These citizens were blindsided, i.e., totally unaware that their interests were at stake until the parties to the counterproposal surfaced and filed comments in the rulemaking proceeding on the Shiner petition.

VI.

Conclusion

13. The petition for rulemaking to allot channel 232A to Shiner was correctly accepted by the Commission and placed on public notice, including publication in the Federal Register. A grant of the motion to strike offends the Administrative Procedure Act and all sense of fairness to Elgin FM and Mr. Crawford. Their Reply Comments in the Shiner rulemaking proceeding should be given full consideration under the 307(b)

policy issues which they address.

Respectfully submitted



Gene A. Bechtel



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July 31, 2001

EXHIBIT A

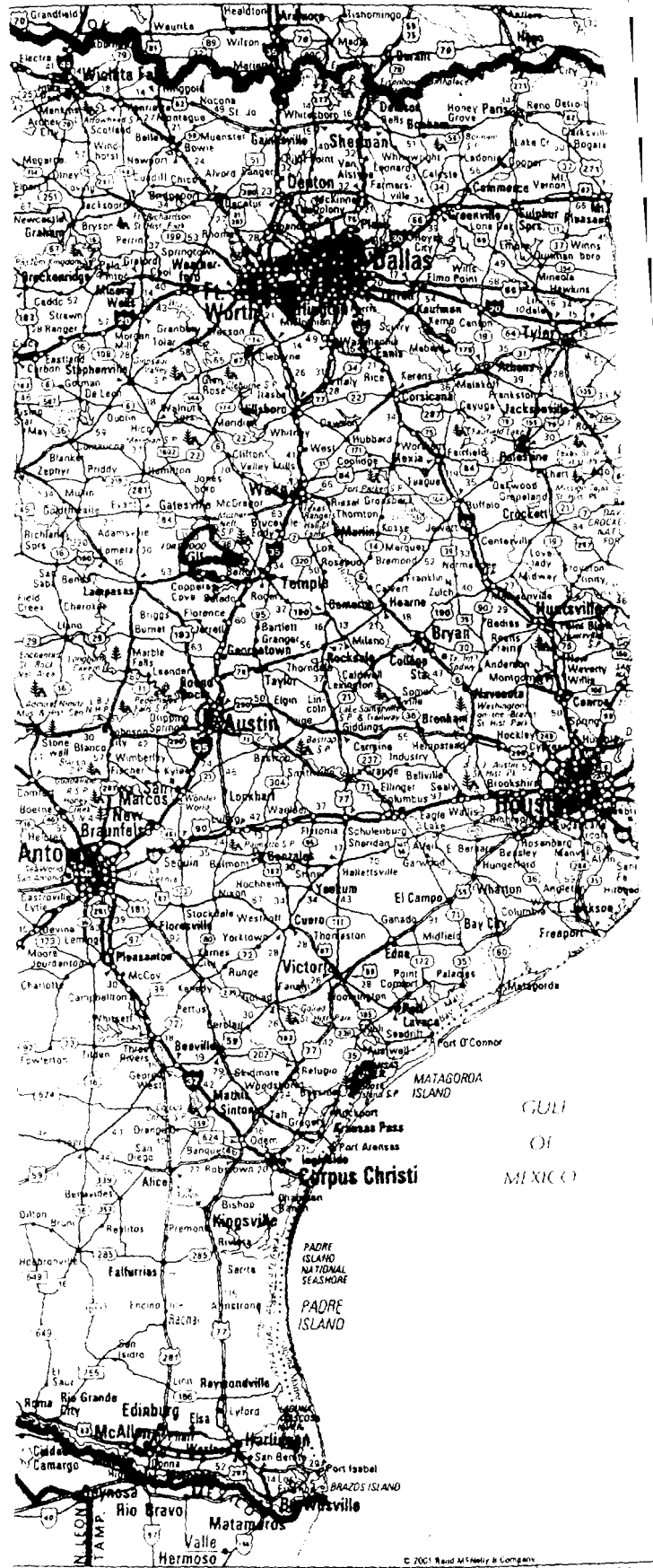
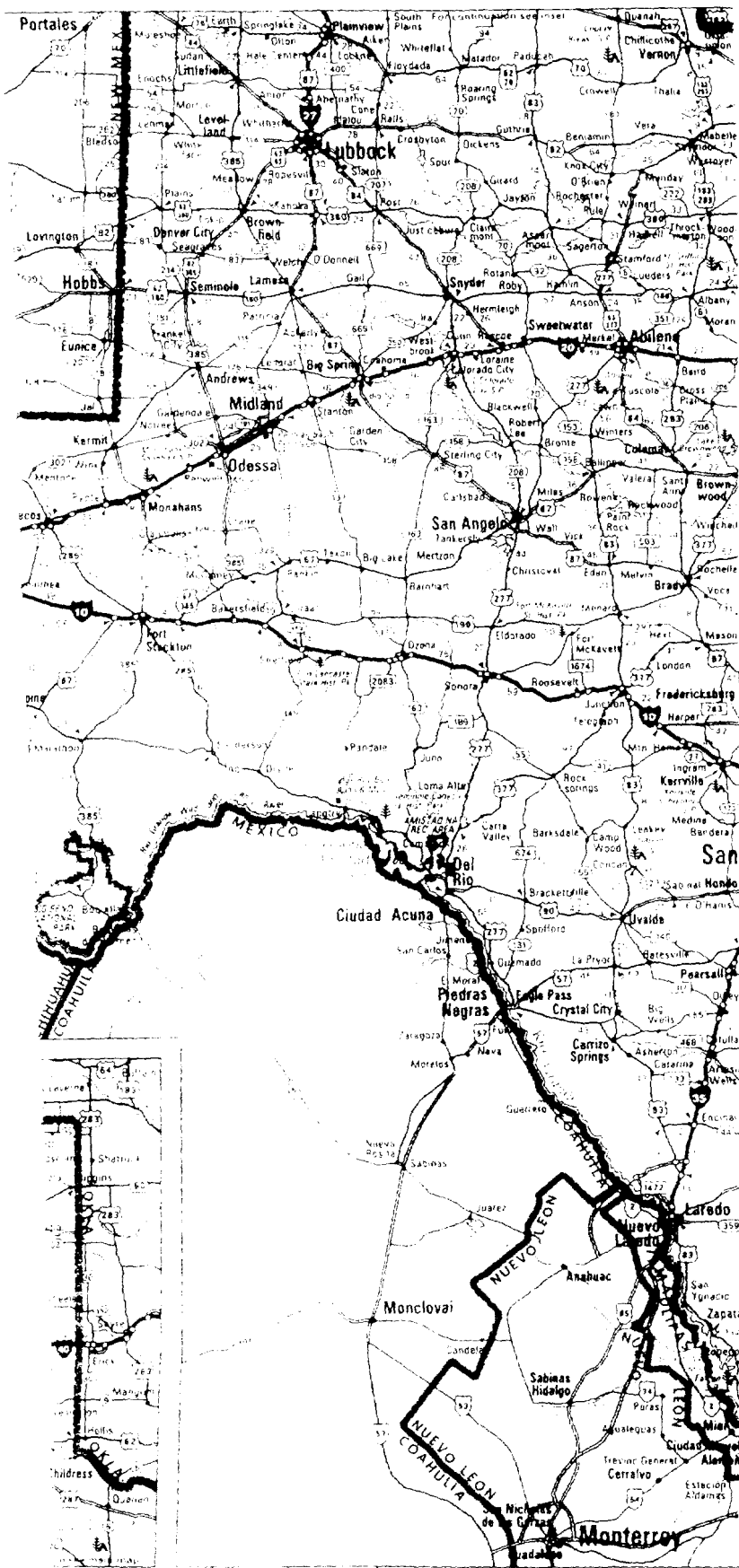


EXHIBIT B

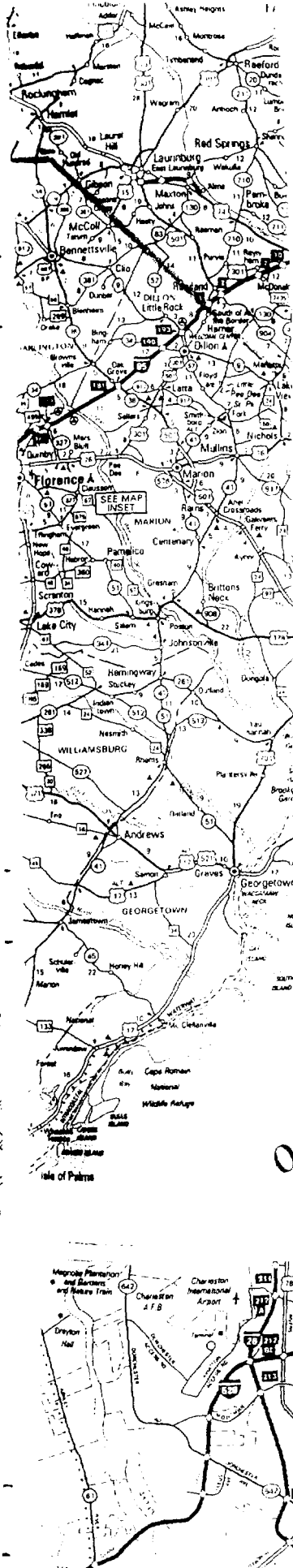
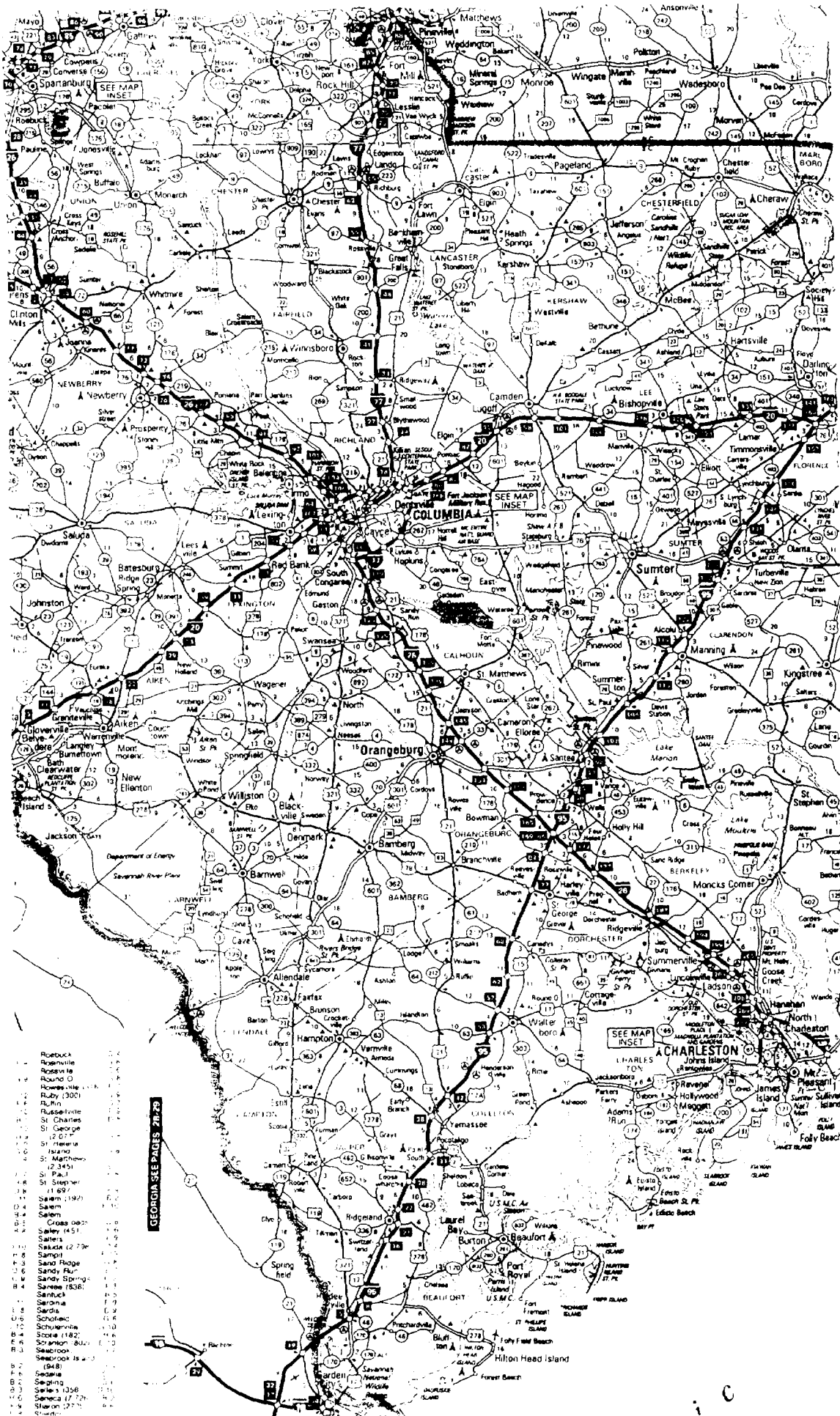


EXHIBIT C

EXHIBIT D

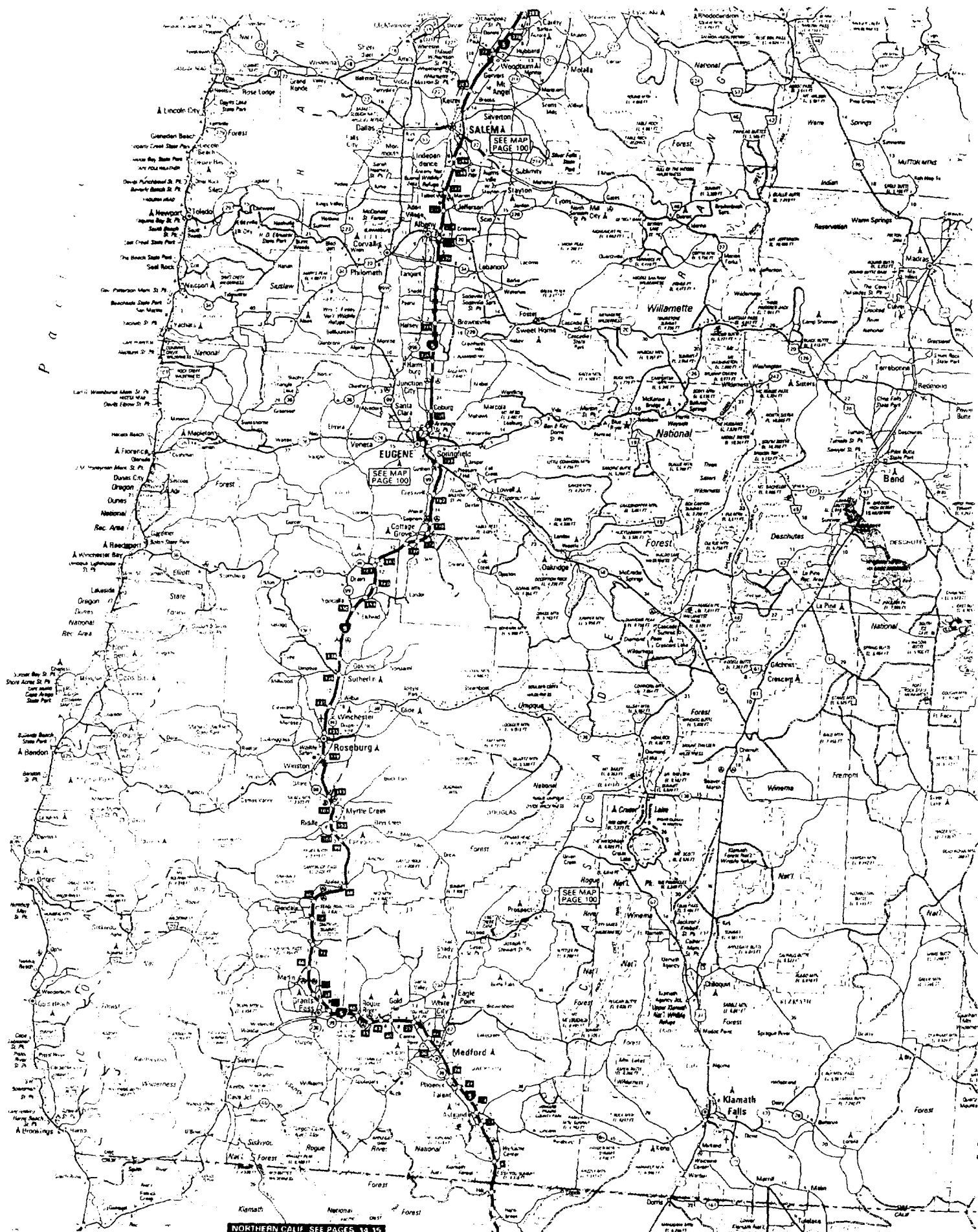
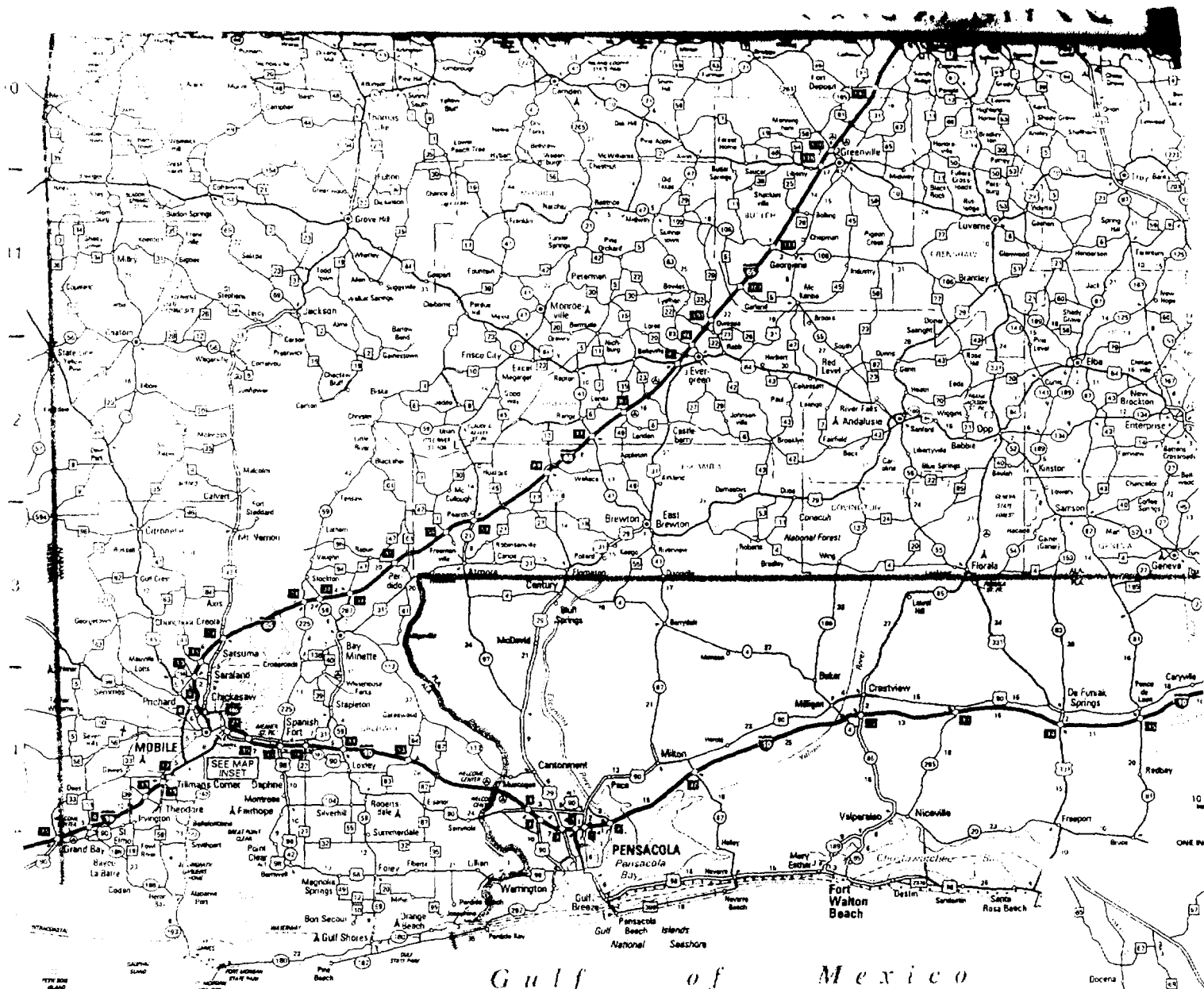
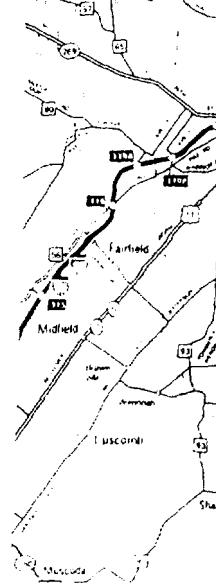
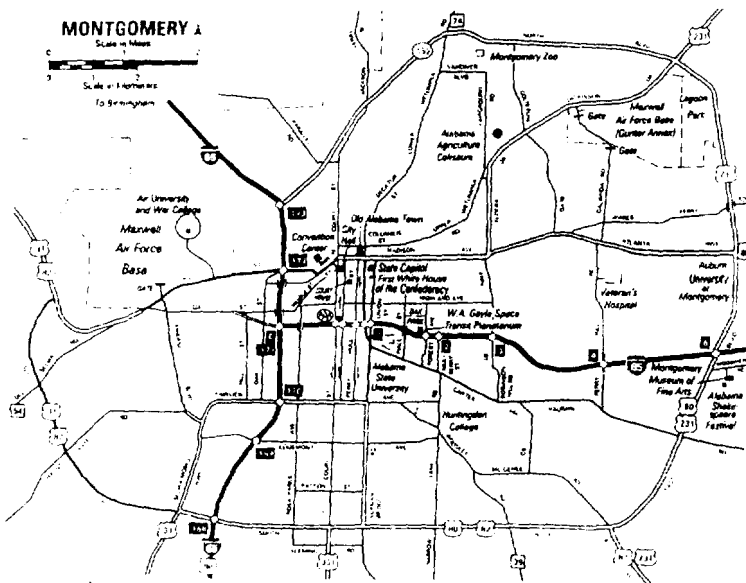
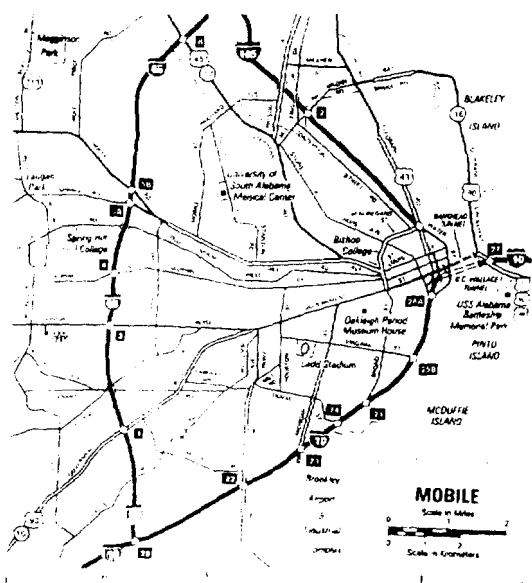


EXHIBIT E



AMERICAN MOTORIST ASSOCIATION



CERTIFICATE OF SERVICE

I certify that on this 31st day of July, 2001, I have caused copies of the foregoing OPPOSITION TO MOTION TO STRIKE to be placed in the United States mails, first class, postage prepaid, addressed to:

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JUL - 3 2001

Before The
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Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Amendment of Section 73.202(b),
Table of Allotments,
FM Broadcast Stations.
(Shiner, Texas)

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)

MM Docket No. 01-105
RM-10104

To: Chief, Allocations Branch

REPLY COMMENTS OF ELGIN FM LIMITED PARTNERSHIP
AND CHARLES CRAWFORD

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July 3, 2001

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47 U.S.C. §307(b)	<u>passim</u>
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Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
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Amendment of Section 73.202(b),)	MM Docket No. 01-105
Table of Allotments,)	RM-10104
FM Broadcast Stations.)	
(Shiner, Texas))	

To: Chief, Allocations Branch

REPLY COMMENTS OF ELGIN FM LIMITED PARTNERSHIP
AND CHARLES CRAWFORD

1. Elgin FM Limited Partnership and Charles Crawford reply to the comments filed by First Broadcasting Company, L.P., Next Media Licensing, Inc., Rawhide Radio, L.L.C., Capstar TX L.P. and Clear Channel Broadcast Licenses, Inc. (the "Joint Parties"). These comments and the counterproposal filed in another proceeding on which they are based are without merit.¹

I.
Summary

2. The JP Counterproposal does not have priority over the instant rulemaking proceeding by virtue of its earlier filing. The JP Counterproposal should be dismissed due to technical deficiencies. The essential components of the grid of allotments and reallocations in the JP Counterproposal are contrary to the public interest under Section 307(b) of the Communications Act and implementing Commission policies. The reallocation of Class C level frequencies to the Dallas-Fort Worth, San Antonio and Austin radio markets is based on indefensible claims of first

¹ The subject comments are referred to as the "JP Comments". The counterproposal, filed in MM Docket No. 00-148 with regard to a proposal to allot a new FM channel at Quanah, Texas, is referred to as the "JP Counterproposal".

local service for communities of infinitesimal size located within the relevant Urbanized Areas.

II.

The instant proposal for Shiner, Texas
is not cut-off by any prior filing

3. Without citation to authority, the JP Comments, at 2, state that the Shiner proceeding should be dismissed because it conflicts with a proposal for Flatonia, Texas, made in the JP Counterproposal that was filed earlier than the Shiner petition and hence purportedly cuts off consideration of the Shiner proposal.

4. Who are the Joint Parties kidding? The petition to allot a new FM channel at Shiner has been vetted by the Commission's staff, it has been found acceptable and put on notice for public comment, and the proposed FM channel at Shiner has been entered in the Commission's data base. The JP Counterproposal has not been vetted by the Commission's staff, it has not been found acceptable or put on notice for public comment, and the wild array of channel changes set forth in the JP Counterproposal has not been entered in the Commission's data base. See, e.g., JP Comments at 1.

III.

The JP Counterproposal should be
dismissed as fatally defective

5. The JP Counterproposal was filed on October 20, 2000. As of that date, the counterproposal must have been technically correct and subsequent attempts to correct the deficiencies will not be accepted. Broken Arrow and Bixby, Oklahoma, and

Coffeyville, Kansas, 3 FCC Rcd 6507, 6511 (Policy and Rules Division 1988). There were at least three deficiencies in the JP Counterproposal.

6. First, while the Joint Parties used up the two allowed realignments without the consent of the affected stations (at Archer City and Nolanville, Texas), JP Counterproposal at 3, the Joint Parties did not nail down a technical realignment required with respect to a conflicting Class C1 application to upgrade station KICM(FM) at Krum, Texas, relying on the "expectation" that this proposed improvement of the Krum facility would be dismissed. JP Counterproposal at 13. As of the JP Counterproposal filing date, the conflicting application had not been dismissed nor had the applicant party committed itself to secure such dismissal. To the contrary, KICM(FM) has recently demonstrated its continuing interest in the C1 application in filing a minor modification thereof on May 8, 2001.

7. Second, the Joint Parties relied on the notion that Capstar's Waco, Texas, station will be moved to Lakeway, Texas, within the Austin Urbanized area. JP Counterproposal at 19. This station is under common ownership with the party that was recently required to sell one of its Austin stations in order to come within the local multiple ownership limit under FCC regulations, 47 C.F.R. §73.3555. BAL-20000317AAW, granted August 15, 2000, Official Notice requested. Accordingly, the move of the Waco station into the Austin market required a commitment to make a further divestiture there. No such commitment was

provided in the JP Counterproposal.

8. Third, for the move from Waco to the Austin Urbanized Area, the JP Counterproposal relied on a defective transmitter site. Exhibit 1 shows the location of the site to be in the Colorado River.

IV.

Reallotments essential to the entire array of
allotments in the counterproposal offend the
public interest under 47 U.S.C. §307(b)

9. In obvious recognition that an enormous interrelated chain of allotments and reallotments has been proposed, the Joint Parties cited an example of Commission approval of an interrelated chain of allotments. JP Counterproposal at 3. The example is Farmersville, et al (Texas) and Ada, et al (Oklahoma), 12 FCC Rcd 4099 (Allocations Branch 1997). In that situation, the Commission allotted a number of new FM channels in relatively small communities in Texas and Oklahoma. The only instance of an allotment raising any question concerning the use of a smaller community to secure an allotment for a nearby larger community involved a community that was, respectively, one-fourth and one-seventh the size of two Urbanized Areas to which it would provide service but in which it was not located.

10. The Joint Parties want the Commission to believe that the subject counterproposal is similar. Well, not quite. The essence of the subject counterproposal is to reallot Class C-level FM facilities into the Dallas-Fort Worth market (the 6th largest in the nation with about 60 existing radio stations), the San Antonio market (the 32nd largest in the nation with about 40

existing radio stations) and the Austin market (the 49th largest in the nation with about 30 existing radio stations).²

11. In order to accomplish this remarkable objective, having an ultimate marketplace value somewhere in the range of A-Rod's compensation package with the Texas Rangers, the Joint Parties would remove a radio station from the Waco market (the 193rd market with about 10 existing stations), remove one of four existing stations from Durant, Oklahoma (not located within any Urbanized Area) and delete the only radio allotment for McQueeney, Texas (also not located within any Urbanized Area).

12. How would the Joint Parties do this? They want the Commission to believe that the public interest under Section 307(b) of the Communications Act would be served by establishing so-called first local outlets for three communities of infinitesimal size that are a tiny fraction of 1% of the some 4,500,000 people to be served by their new facilities in the nation's 6th, 32nd and 49th largest radio markets. If the facts and circumstances of these proposals comply with Section 307(b) of the Act, then the facts and circumstances of any infinitesimal small community in any major radio market would comply with Section 307(b) of the Act. This simply cannot be.

13. In order for the scheme of the Joint Parties to succeed, each of the subject additions to the Dallas-Fort Worth, San Antonio and Austin markets must be acceptable. If any one of

² Exhibit 2 depicts city grade contours demonstrating the nature of the reallocations; market rankings and station counts are taken from Broadcasting and Cable Yearbook 2000, D-704/715.

them is not, the scheme fails. In point of fact, none is acceptable. Each will be discussed in turn.

A.

The San Antonio market

14. The Joint Parties want the Commission to accept the premise that allotting a Class C1 channel to the community of Converse, Texas (population 8,800), imbedded in the San Antonio Urbanized Area, under the guise that it would be the first local outlet for the community, is the predominantly meritorious 307(b) public interest use of the FM spectrum, even though to do so would delete an existing allotment as the first local station at McQueeney, Texas (population 2,200) that is located outside the San Antonio Urbanized Area, flying in the face of an absolute prohibition under Commission policy. Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License, 5 FCC Rcd 7094, 7096 (1990).²

15. Moreover, allotting the Class C1 channel to Converse would create a gray area. But never mind. The gray area can be cured by allotting a Class A channel at Flatonia, Texas (population 1,295), although this would preclude allotting a first channel to Shiner, Texas (population 2,074) as proposed by

² The licensee of the radio station, KVCQ, which previously committed to activate the allotment in McQueeney, stated in support of the JP Counterproposal that it no longer intends to do so. JP Counterproposal at 30. Guess what? That licensee, Rawhide Radio, L.L.C., is the member of the Joint Petitioners who now would propose to own and operate the Converse/San Antonio station. Id.

the Commission in the instant rulemaking proceeding. Both Flatonia and Shiner are far removed from any Urbanized Area, and Shiner's population superiority prevails over Flatonia -- except in the Alice-in-Wonderland world of the Joint Parties in which they would create a gray area and then expect to receive extra credit for eliminating it.

16. The Commission's criteria, Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License, *supra*, 5 FCC Rcd at 7095-96; *e.g.*, Parker and Port St. Joe, Florida, 11 FCC Rcd 1095 (Allocations Branch 1996), do not remotely support a local service preference for Converse:

(a) The first cut is to determine if the signal covers the metropolitan area as well as the alleged community of license. Of course it does. The C1 facility will serve about one and a quarter million people in the San Antonio market. JP Counterproposal at 31.

(b) The second cut is to determine if Converse is within the San Antonio Urbanized Area and the relative size of the center city and the nearby small community. Converse lies within the Urbanized Area, creating a major hurdle to overcome under Commission policy. Moreover, Converse is less than 1% the size of San Antonio, a highly adverse comparison. JP Counterproposal at 31.³

³ The only case cited, JP Counterproposal at 6-7, for such a low percentage did not involve the critical factor of a community within the Urbanized Area of the metro community. Ada, Newcastle

(c) The third cut is to consider evidence of interdependence. While Converse has some community attributes, these are no more and no less than community attributes of any innercity incorporated area with as few as 8,800 residents. CP Counterproposal at 32-35. No convincing evidence is offered to circumvent the strongly adverse impact of cuts one and two above. To the contrary, the Joint Parties have offered no testimony by local residents or community leaders attesting to interdependence; some 89% of the local resident work force is employed outside the community, more than 60% in San Antonio itself⁴; the community is not of sufficient size or independent importance to support its own daily or weekly newspaper; and, it can be said without fear of rational contradiction, the advertising market -- for the proposed C1 facility serving a million and a quarter people -- is the nation's 32nd largest radio market, not the four square corners of Converse, Texas.

and Watonga, Oklahoma, 11 FCC Rcd 16896 (Allocations Branch 1996) (Newcastle/Oklahoma City). Another case which the Joint Parties cite, id, reflecting a percentage of 3%, also did not involve a community within the Urbanized Area of the metro community. Scotland Neck and Pinetops, North Carolina, 10 FCC Rcd 11066 (Policy and Rules Division 1995) (Pinetops/Rocky Mount). The third case cited, id, reflected a percentage of 6%, which the Joint Petitioners failed to mention, and likewise did not involve the factor of location within the Urbanized Area. Headland, Alabama, and Chattahoochee, Florida, 10 FCC Rcd 10352 (Allocations Branch 1995) (Headland/Dothan, Alabama).

⁴ With regard to this factor, the only case cited by the Joint Parties, Coolidge and Gilbert, Arizona, 11 FCC Rcd 3610 (Allocations Branch 1996), JP Counterproposal at 8, involved 87% of the work force employed outside the subject community; however, 60% were employed within a 10 mile radius of that community and only 25% were employed in the central city.

17. The 307(b) choice here is between adding the approximately 41st radio station to San Antonio or maintaining an existing first local allotment at McQueeney, establishing a new first local allotment at Shiner and avoiding the creation of a gray area.

B.
The Austin market

18. The Joint Parties want the Commission to accept the premise that allotting a Class C1 channel to the community of Lakeway, Texas (population 4,044), imbedded in the Austin Urbanized Area, under the guise that it would be the first local outlet for the community, would be a valid and meritorious 307(b) public interest use of the FM spectrum. The Commission's criteria do not remotely support a local service allotment status for Lakeway:

(a) The first cut is to determine if the signal covers the metropolitan area as well as the alleged community of license. Of course it does. The C1 facility will serve more than a half million persons in the Austin market. JP Counterproposal at 20.

(b) The second cut is to determine if Lakeway is within the Austin Urbanized Area and the relative size of the center city and the nearby small community. Lakeway lies within the Urbanized Area, creating a major hurdle to overcome under Commission policy. Moreover, the population of Lakeway is less than 1% of the population of Austin, a highly adverse comparison. JP Counterproposal at 20.

(c) The third cut is to consider evidence of interdependence. While Lakeway has some community attributes, these are no more and no less than community attributes of any innercity incorporated area with as few as 4,044 residents. CP Counterproposal at 20-24. No convincing evidence is offered to circumvent the strongly adverse impact of cuts one and two above. To the contrary, the Joint Parties have offered no testimony by local residents or community leaders attesting to interdependence; some 88% of the local resident work force is employed outside the community; the community is not of sufficient size or independent importance to support its own daily or weekly newspaper; and, it can be said without fear of rational contradiction, the advertising market -- for the proposed Class C1 facility serving more than a half million people -- is the nation's 49th largest radio market, not the four square corners of tiny Lakeway, Texas.

19. The 307(b) attributes consist of adding the approximately 31st radio station in the nation's 49th largest radio market while taking away one of approximately 10 stations in the nation's 193rd radio market. Viewed most favorably to the Joint Parties, this does not trigger any policy or valid reason to warrant upsetting the existing allotment structure and disturbing established expectancies of the public in reliance on that structure.

C.
The Dallas-Fort Worth market

20. The Joint Parties want the Commission to accept the

premise that allotting a full Class C channel to the community of Keller, Texas (population 13,683), located in the Dallas-Fort Worth Urbanized Area, under the guise that it would be the first local outlet for the community, would be a valid and meritorious 307(b) use of the FM spectrum. The Commission's criteria do not remotely support a local service allotment status for Keller:

(a) The first cut is to determine if the signal covers the metropolitan area as well as the alleged community of license. Of course it does. The full Class C facility will serve nearly three million persons. JP Counterproposal at 7.

(b) The second cut is to determine if Keller is within the Dallas-Fort Worth Urbanized Area and the relative size of the center city and the nearby small community. Keller lies within the Urbanized Area, creating a major hurdle to overcome under Commission policy. Moreover, the population of Keller is approximately 1% of the population of Dallas and 3% of the population of Fort Worth, the former a highly adverse comparison, the latter also an adverse comparison, in contrast with cases cited by the Joint Parties, none of which involved subject communities located within the Urbanized area. JP Counterproposal at 6; ¶16, n. 3, supra.

(c) The third cut is to consider evidence of interdependence. While Keller has some community attributes, these are no more and no less than community attributes of any incorporated area having as few residents as 13,683 people within a metropolitan area having millions of residents. CP

Counterproposal at 7-13. No convincing evidence is offered to circumvent the strongly adverse impact of cuts one and two above. To the contrary, the Joint Parties have offered no testimony by local residents or community leaders attesting to interdependence; some 87% of the local resident work force is employed outside the community; the community's size and independent importance supports only a weekly newspaper; and, it can be said without fear of rational contradiction, the advertising market -- for the proposed full Class C facility serving more nearly three million people -- is the nation's 6th largest radio market, not the four square corners of Keller, Texas.

21. The 307(b) choice is between adding the approximately 61st radio station in the nation's 6th largest radio market while taking away one of four existing stations in Durant, Oklahoma. While Durant's population is approximately the same as Keller's population, Durant is a stand-alone community which does not bear the contamination of the attempt to use Keller to manipulate the allotment processes. Viewed most favorably to the Joint Parties, this 307(b) comparison does not trigger any policy or valid reason to warrant upsetting the existing allotment structure and disturbing established expectancies of the public in reliance on that structure.⁵

⁵ The complex grid of reallocations in order to secure a full Class C allotment for Dallas-Fort Worth would modify channels and facilities at Archer City, Texas, Seymour, Texas, Lawton, Oklahoma, Elk City, Oklahoma, Healdton, Oklahoma and Ardmore, Oklahoma, purportedly resulting in a new Class A channel for

V.
Conclusion

22. For these reasons, the Commission should grant the instant rulemaking petition and allot channel 232A to Shiner, Texas.

Respectfully submitted



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July 3, 2001

Purcell, Oklahoma (population 4,784). However, that grid was tied to dismissal of the Krum application, which the Joint Parties failed to establish, warranting dismissal of the JP Counterproposal as shown in ¶6, supra.

EXHIBIT 1

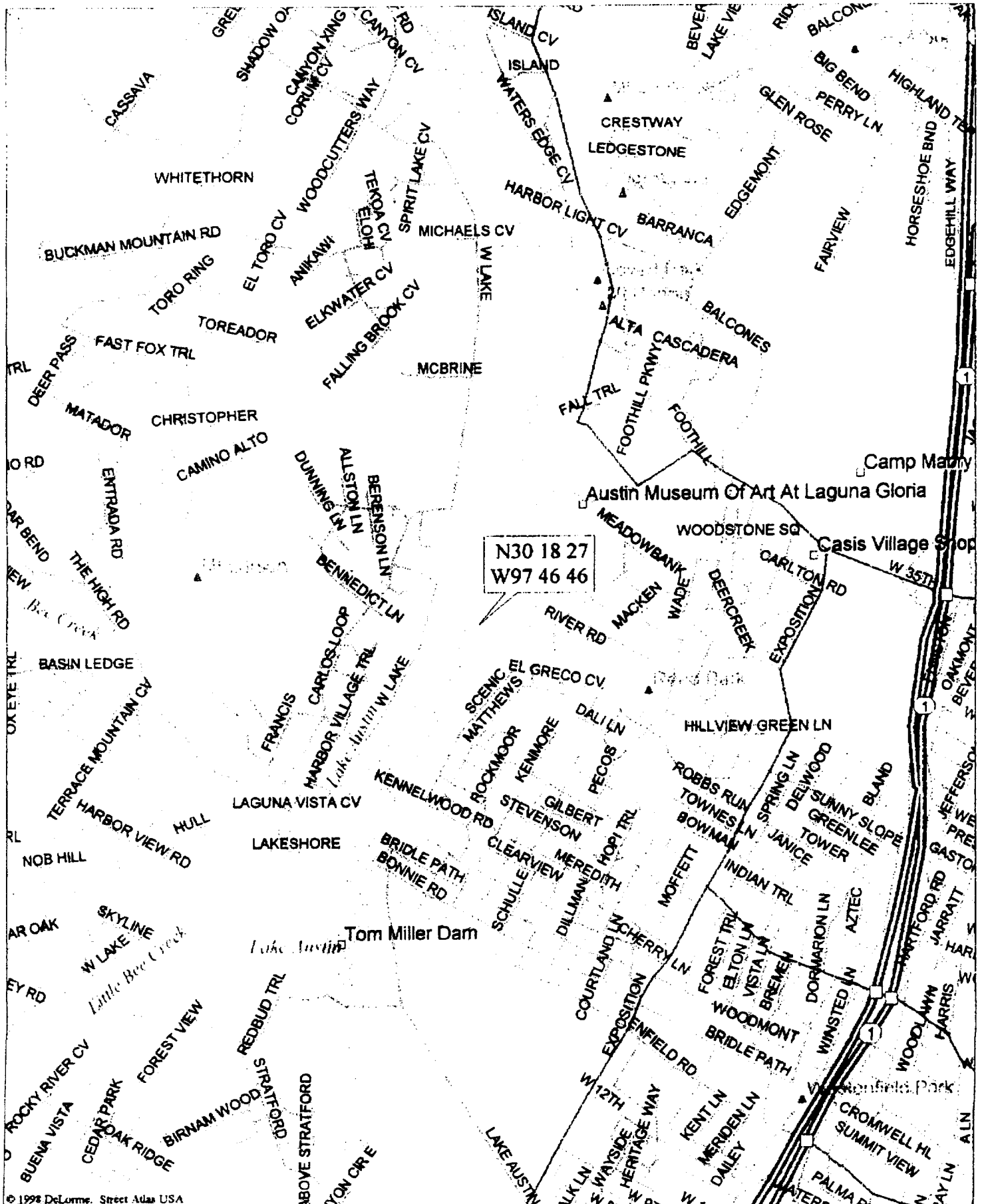
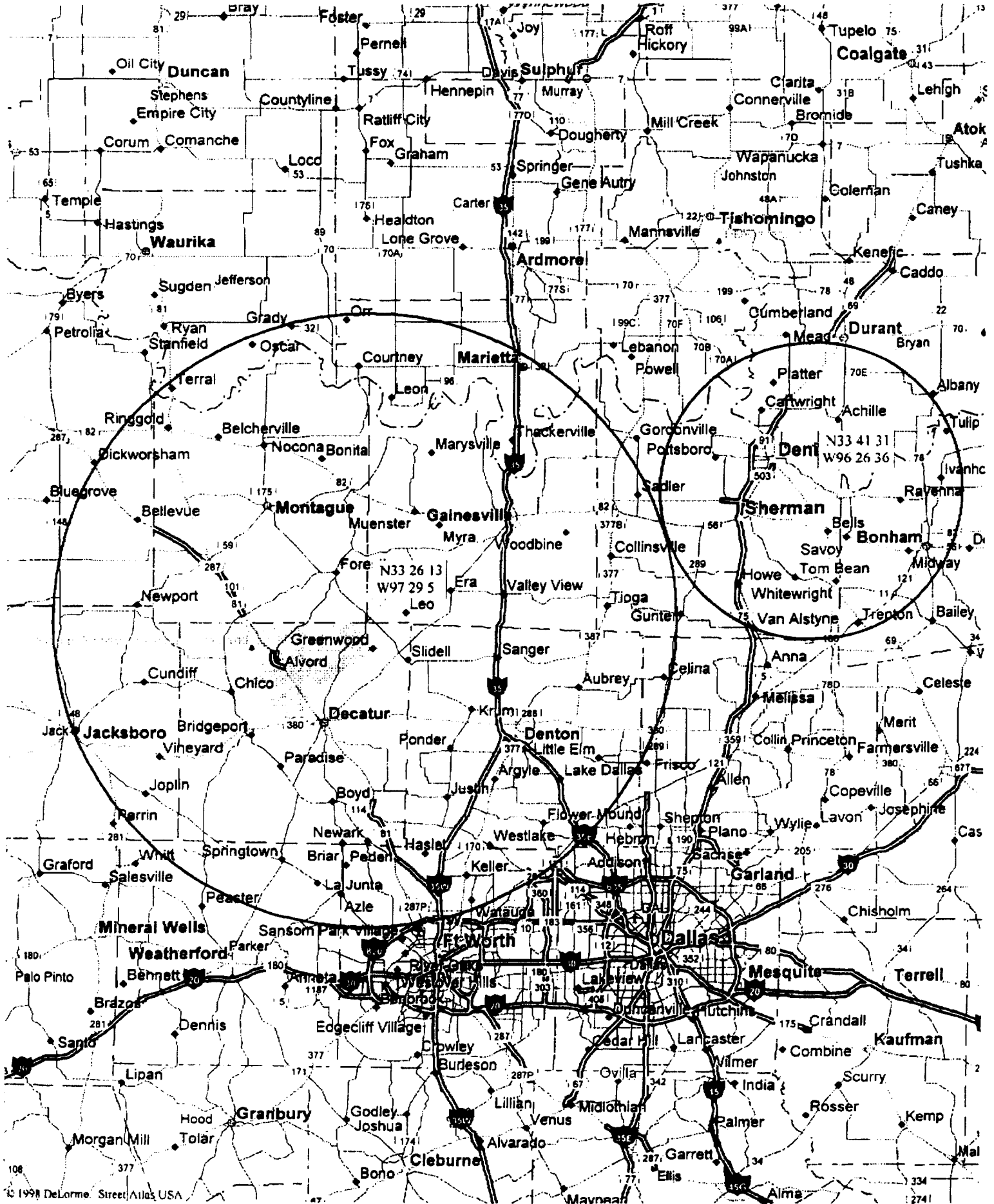
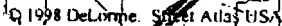


EXHIBIT 2







CERTIFICATE OF SERVICE

I certify that on this 3rd day of July, 2001, I have caused copies of the foregoing REPLY COMMENTS OF ELGIN FM LIMITED PARTNERSHIP to be placed in the United States mails, first class, postage prepaid, addressed to:

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